

OLO Report 2002-1

Enforcing the Alcohol Age-of-Sales Laws in Montgomery County

Executive Summary

While reducing alcohol sales to minors will not eliminate underage drinking, OLO recommends that Montgomery County maintain a vigorous program of compliance checks as part of an overall strategy to discourage alcohol consumption by persons under 21.

The empirical research shows that a well-designed compliance check program does reduce alcohol sales to underage persons. In addition, compared to other strategies used to enforce alcohol age-of-sale laws, compliance checks are relatively easy, quick, and less expensive.

A well-publicized compliance check program provides another opportunity to reinforce a community norm that the sale of alcohol to minors is unacceptable. The County's responsibility to strictly enforce the alcohol age-of-sales laws seems particularly important because of the unique role the County has both in selling alcohol and licensing establishments to sell alcohol.

OLO recommends several changes to improve the effectiveness and efficiency of the compliance check program. To address gaps in communication and coordination, key representatives from the Board of License Commissioners (BLC), Office of the BLC, Police Department, Office of the County Attorney, and Office of the State's Attorney should reach agreement on the basic parameters of the compliance check program. Issues to reach accord on include: the frequency and timing of compliance checks, protocols for selecting and using underage buyers, the respective role of the Police Department and Office of the BLC for conducting compliance checks, and time frames for following-up with administrative and criminal charges against violators.

Consistent with the empirical research on deterrence, OLO recommends that the County seek to deliver certain, swift, and severe penalties to licensees who sell alcohol to underage persons. This practice should be maintained even during times when a larger than expected number of licensees are charged with selling alcohol to a minor. Toward this goal, OLO recommends that:

- The Board of License Commissioners should commit to taking administrative licensing action on underage alcohol violations within 100 days of a reported incident, and adjust its hearing schedule as needed to meet this 100-day target for action;
- The County Attorney should assign an Assistant County Attorney to present the County's cases on sale-to-minor violations in show cause hearings before the BLC; and
- The BLC should adopt a penalty matrix for alcohol law violations that includes a mandatory license suspension for licensees who commit a second sale-to-minor offense within three years.

Additional recommendations to improve the County's compliance check program are: to better publicize program results and the penalties imposed on establishments for selling alcohol to minors; and support State law changes that would allow police officers to issue a criminal citation to a clerk/server for selling alcohol to a person under 21. Finally, OLO recommends that County-owned liquor stores that sell alcohol to an underage person face administrative penalties comparable to those faced by private retailers.

CHAPTER G: FINDINGS

This chapter presents the Office of Legislative Oversight's findings in two parts:

- Part 1 summarizes research and comparative findings about the commercial availability of alcohol to minors and the enforcement of alcohol age-of-sales laws; and
- Part 2 summarizes findings on how Montgomery County conducts compliance checks and pursues administrative and criminal penalties against those who sell alcohol to persons under 21.

PART 1: RESEARCH AND COMPARATIVE FINDINGS

Finding #1: Many young people under 21 consume alcohol and the prevalence of alcohol use increases rapidly with age. The percent of Montgomery County adolescents who report consuming alcohol is somewhat below that reported either statewide or nationally.

Survey data show significant alcohol use by young people in the United States under the age of 21. National survey data from 2000 show that 22% of all 8th graders, 41% of 10th graders, and half of all 12th graders report consuming alcohol within the past 30 days. About one fourth of 10th graders and one-third of 12th graders also report they engaged in binge drinking within the past month; binge drinking is defined as consuming five or more drinks on one occasion.

The percent of adolescents who report consuming alcohol in Montgomery County is lower than the percent reported nationally. Specifically, according to the 2000 Maryland Adolescent Survey, 15% of 8th graders, 27% of 10th graders, and 44% of 12th graders in Montgomery County report consuming alcohol within the past 30 days. 17% of 10th graders and 28% of 12th graders in Montgomery County also report they engaged in binge drinking within the past month. Across categories, Montgomery County's reported rates of underage drinking are consistently several percentage points below those reported statewide.

Finding #2: Alcohol use among young people is associated with undesirable outcomes, both in the immediate and longer-term.

Alcohol use among young people is associated with impaired school performance, physical abuse, unwanted pregnancies, accidents, and injuries. The early use of alcohol is correlated with higher rates of alcohol dependency later in life. Several recent studies also report that alcohol use by teens is linked to irreparable brain damage.

There is substantial empirical research that documents the effectiveness of the minimum 21 drinking age laws. The national data show a direct correlation between the increase in the drinking age and a reduction in alcohol-related traffic fatalities. The passage of the 21-year old drinking age laws is credited with saving about 1,000 teenage lives each year. In addition, studies have linked raising the legal drinking age to fewer pedestrian deaths, unintentional fatal injuries (not involving motor vehicles) and suicides.

Finding #3: Commercial outlets are not the primary source of alcohol for underage drinkers. However, persons under 21 who attempt to purchase alcohol are often successful.

Underage drinkers obtain alcohol when and where they perceive that alcohol is available and the risks of obtaining it are low. Studies consistently report that adults over 21 are the most common source of alcohol for underage drinkers, and that the frequency of obtaining alcohol from commercial outlets increases with age.

Although commercial outlets are not the primary source of alcohol for persons under 21, empirical research consistently shows that young people who attempt to purchase alcohol are often successful. One of the most widely cited studies of purchasability (involving 1,800 purchase attempts in 900 outlets across 24 cities) found that underage buyers were able to purchase alcohol without any questions asked approximately half the time.

The research is inconclusive as to what characteristics or practices of merchants are associated with an establishment's propensity to sell alcohol to persons under 21. Several studies suggest that the presence of a manager on site and the formal training of all bar staff lead to lower rates of alcohol sales to minors. In addition, off-sale establishments located in malls or residential areas, and off-sale businesses with more than one person in line appear to be associated with increased sales to minors.

Finding #4: Opinion survey research shows strong public support for enforcement of the alcohol age-of-sales laws. Police officers cite competing demands on their time as an obstacle to greater levels of alcohol enforcement.

Opinion survey research evidences a high level of public support for most alcohol control policies, including the enforcement of under-21 drinking laws. One study reported that 83% of all respondents favored assessing financial penalties on persons who provide alcohol to underage persons. Public support for financial penalties is even higher among those surveyed with higher education and higher incomes.

One opinion survey of police officers (across four states) found that most officers know where underage drinkers obtain alcohol in their respective communities. However, officers report that competing demands on officers' time and perceptions of mixed views in the community about strict alcohol enforcement prevent more aggressive intervention by the police.

Finding #5: In many jurisdictions across the country, little attention is paid to the enforcement of laws regulating alcohol sales to minors.

A 1995 study of local government practices confirmed low rates of enforcement of the legal drinking age in general, and in particular, found little formal action was taken against those who sell or provide alcohol to underage youth. The authors concluded that:

- Many counties give no attention to drinking age enforcement at all.
- Enforcement action taken is often focused on individual young drinkers rather than on commercial outlet or private person that supplied the alcoholic beverages to youth.
- More than one-fourth of all counties examined had no administrative licensing action against any outlet over the three-year period studied.
- In addition, substantial number of counties made few or no drinking age arrests.

The study did find that rates of enforcement varied with certain characteristics of the jurisdictions examined. In general, higher rates of enforcement were found in counties that had higher general crime arrest rates, higher proportions of unoccupied housing, smaller populations, and larger land areas.

Finding #6: Across the country, there are mixed views and practices concerning the type(s) of penalties pursued when a licensed establishment is found guilty of selling alcohol to a person under 21.

In most jurisdictions, ABC (Alcohol Beverage Control) agencies and local law enforcement share enforcement of the age-21 laws. In all states, a violation of the alcohol age-of-sales laws can result in the imposition of an administrative and/or criminal penalty.

The administrative sanctions that jurisdictions across the country can impose on a licensee for selling alcohol to a minor range in severity. Specific penalties on a licensee for a first time offense range from nothing to \$5,000 or a 6-month license suspension. One survey reported that ten states (including Maryland) allow licensees to pay fees instead of facing a license suspension. The survey also reported that actual revocation of a license for selling alcohol to a person under 21 years old is "rare".

Depending on the state, the criminal penalties for selling or otherwise providing alcohol to a minor range in severity from a misdemeanor (punishable by a fine or imprisonment of less than one year) to a felony (punishable by imprisonment for more than one year). Specific penalties include fines (\$50 to \$10,000), jail sentences (maximum of 5 years), to community service, and/or driver license revocation (for minors).

Finding #7: Substantial anecdotal evidence and a handful of more rigorously designed research studies indicate that compliance check operations can be effective in reducing sales of alcohol to underage persons.

A repeated theme in the empirical research on ways to reduce alcohol consumption by young people is that no single approach will entirely solve the problem. However, individual approaches (such as compliance checks) implemented and used in combination with other strategies may in fact reduce the incidence of teenage drinking.

Substantial anecdotal evidence and a handful of more rigorously designed research studies indicate that compliance check operations can be effective in reducing sales of alcohol to underage persons. A number of studies evidence that increased rates of compliance with alcohol age-of-sales laws are correlated with the implementation of programs characterized by multiple waves of compliance checks and the imposition of penalties against violators.

Finding #8: Among the strategies available to enforce alcohol age-of-sales laws, compliance checks are a comparatively efficient (i.e., relatively easy, quick, and inexpensive) use of public resources.

Enforcement actions in support of minimum purchase age laws can be targeted either on the seller or the buyer. It is argued that because there are far fewer licensed retail outlets that sell alcohol compared to the number of potential underage buyers, it is a more efficient use of police resources to target the relatively few sellers. In addition, it is generally true that a greater range of sanctions, including administrative licensing action can be taken against the seller.

In addition, compared to other strategies for reducing alcohol consumption by youth, compliance checks are seen as relatively easy to do. It is argued that once a program of regular compliance checks is organized, it is relatively easy, quick, and inexpensive program to implement.

PART II: COMPLIANCE CHECKS IN MONTGOMERY COUNTY

Finding #1: In comparison to many jurisdictions where little attention is paid to underage drinking enforcement, Montgomery County has a national reputation for its focus on this issue. Compliance checks are one of multiple strategies currently used in the County to address alcohol use by persons under 21.

Montgomery County's efforts to reduce underage drinking have been written up in "how to" guides and "best practices" published by the federal Department of Justice and Department of Transportation. In particular, the County has been lauded for:

- Establishing an Alcohol Initiatives Unit in the Montgomery County Police Department that focuses on enforcing alcohol-related laws, managing alcohol-related events, and educating young people and adults about the dangers of illegal underage drinking;
- Developing effective approaches to use when responding to underage drinking parties, e.g., using "controlled dispersal" to prevent the scattering of all of the young people; and
- Establishing a public-private partnership to prevent underage alcohol use in the County. Started in 1992, Drawing the Line on Underage Drinking's goals include educating youth, parents, and other community members that alcohol use by minors is unhealthy and illegal, and expanding alcohol-free activities for youth under 21 years of age.

Finding #2: An effective program of compliance checks requires good coordination among all of the involved agencies. In recent years, gaps in communication and occasional discord between several key offices have hampered the effectiveness of the County's compliance check program.

In Montgomery County, compliance checks directly involve the following Executive and Judicial branch offices/departments:

- Board of License Commissioners;
- Office of the Board of License Commissioners;
- Department of Police;
- Office of the County Attorney;
- Office of the State's Attorney; and
- District Court.

In some cases, other law enforcement agencies (e.g., Office of the Sheriff, Maryland State Police, Rockville City Police, Gaithersburg City Police), the Department of Liquor Control, and/or the Alternative Community Service program run by the Department of Correction and Rehabilitation are also involved.

OLO found evidence of good communication and substantial agreement among some of the involved offices on how to conduct compliance checks and how to follow-up with alleged violators. For example:

- Officers from the MCPD Alcohol Initiatives Unit and attorneys from the State's Attorney's District Court Team have reached agreement about the evidence needed to pursue criminal charges against the individual store clerks/servers who sell alcohol to underage persons.
- A process for constructive communication between and among the Office of the County Attorney, the Office of the BLC, and the BLC exists for resolving legal issues during hearings, and in the writing and review of BLC decision resolutions.

However, OLO found gaps in communication and unresolved issues of disagreement about the compliance check program between the MCPD Alcohol Initiatives Unit and the Office of the BLC, and between the MCPD Alcohol Initiatives Unit and the Commissioners themselves. For example:

- The Office of the BLC and the Alcohol Initiatives Unit have rarely coordinated the timing or location of their respective compliance check operations.
- There have been problems with the timing and receipt of essential written information between the MCPD Alcohol Initiative Unit and the Office of the BLC, e.g., the transmission of police reports, receipt of notices to appear at the BLC's show cause hearings.
- BLC members and officers from the Alcohol Initiatives Unit do not always agree on what constitutes sufficient evidence that a licensed establishment sold alcohol to an underage person.
- The administrative licensing action taken by the BLC against specific establishments is not routinely reported back to the MCPD. This had led to misunderstandings about what happened as a result of officers' underage alcohol enforcement efforts.

In sum, these communication gaps and areas of disagreement have hampered the overall effectiveness of the County's efforts to enforce alcohol age-of-sales laws.

Note: During the course of OLO's study, key representatives from the involved offices embarked upon a process to improve communication and cooperation about compliance checks. For more on this, see the comments from the Chief Administrative Officer, included in Chapter I, beginning on page 85.

Finding #3: The compliance check result data that are available do not constitute a statistically reliable baseline for the rate of underage alcohol sales in the County. There are multiple reasons why the results reported by the Office of the BLC are substantially different from those reported by the Department of Police.

Both the Office of the BLC and the MCPD Alcohol Initiatives Unit report conducting a mix of random and targeted compliance checks in recent years, although neither has had a formal plan for how or when establishments are selected. The Department of Police and Office of the BLC have rarely coordinated either the location or timing of their respective compliance check operations.

Due to changes in staff and inconsistent record keeping practices, the data on Police-sponsored compliance checks are not complete. Although the Office of the BLC maintains comparatively more complete data, OLO also encountered some apparent gaps in BLC office records related to compliance checks.¹

The Office of the BLC started conducting compliance checks using underage buyers in 1992. Office records show that between FY 1998 and FY 2001, BLC inspectors conducted 965 compliance checks across 478 establishments. During this three-year time period, the annual compliance rate (defined as the percent of all establishments that refused to sell alcohol to the underage buyer) reported by the Office of the BLC ranged between 93% and 97%.

The MCPD data that are available show that between FY 00 and November 2001, the Alcohol Initiatives Unit conducted more than 298 compliance checks across 219 establishments. These data show an annual compliance rate that ranged between 35% and 84%.

There are multiple explanations for the different compliance rates reported by the two agencies. In addition to differences in data collection constancy, the most likely reasons are listed below.

¹ It should be noted that during the course of OLO's study period, Office of the BLC staff were able to track down FY01 compliance check case information that initially was not available.

- **Different times of day.** The MCPD's Alcohol Initiatives Unit typically conducts compliance checks at night and on weekends, while the Office of the BLC (for safety reasons) generally conducts compliance checks between 9:00 AM and 9:00 PM.
- **Different protocol.** Until recently, the underage buyers that worked with the Office of the BLC were instructed to walk out of the establishment if asked for age identification. In comparison, the underage buyers working with the Department of Police are instructed to show their driver's license. (Earlier this year, the Office of the BLC changed its protocol so that its underage buyers now also show their driver's license when asked for identification.)
- **Different staffing arrangement.** One part-time Alcohol Tobacco Enforcement Specialist (working with one underage buyer) conducts compliance checks for the Office of the BLC. Conducting compliance checks is this staff member's primary responsibility.

In comparison, compliance checks conducted under the auspices of MCPD involve a variety of officers and underage buyers. The six MCPD officers assigned to the Alcohol Initiatives Unit conduct compliance checks as one among many alcohol-related enforcement activities, e.g., sobriety checkpoints, saturation patrols, surveillance operations. In addition, MCPD officers from the District Stations as well as law enforcement officers from the State Police, Cities of Gaithersburg and Rockville, and Office of the Sheriff participate in MCPD's intensive compliance check effort that typically occurs between Thanksgiving and early January.

Finding #4: The County's approach to conducting compliance checks mirrors many but not all of the "best practices" advocated by other jurisdictions that routinely conduct compliance checks.

Many of the compliance check practices followed here in Montgomery County are similar to those touted by other jurisdictions as the "best" way to structure compliance checks. For example, here in Montgomery County:

- Underage buyers are trained to always answer truthfully to any questions asked of them concerning their age, and to avoid the use of false identification or other tricks to encourage an underage sale.
- Licensees are informed when they first receive their license to sell alcohol that compliance checks are conducted here in the County.
- When an establishment sells alcohol to an underage buyer, the clerk/server who made the sale and the manager/licensee (if on site) are promptly informed that the sale took place.

- Some efforts have been made to build community awareness and support for compliance checks through publicizing the results of compliance checks.

However, examples of "best practices" that are not consistently followed in Montgomery County include:

- All potential underage buyers should be age assessed by a panel of individuals not associated with the compliance check program; underage buyers should be 18 or 19. (Currently, the MCPD Alcohol Initiatives Unit uses underage buyers between the ages of 15 and 20, the Office of the BLC uses an underage buyer between the ages of 18-20.)
- Underage buyers should be paid to provide an extra incentive for attending hearings/court appearances and to reduce the time spent recruiting volunteers. (Currently, the Office of the BLC uses a paid underage buyer, but the MCPD's Alcohol Initiatives Unit only uses volunteers.)
- When an establishment passes a compliance check, a letter of commendation should be sent to the licensee, with a copy to the employee who was on duty and the local liquor board. (MCPD's Alcohol Initiative Unit is in the process of developing such a letter, although it is not yet in use.)
- When a sale-to-minor violation occurs, both administrative licensing sanctions against the establishment owner and criminal charges against the individual clerk/server who made the sale should be pursued. (Currently, the MCPD often but not always pursues both administrative and criminal penalties; the Office of the BLC only pursues administrative penalties.)

Finding #5: To serve as an effective deterrent, the County's compliance check program must send the message to licensees that selling alcohol to an underage person will result in swift, certain, and severe administrative penalties. Data on action taken by the BLC does not evidence that licensees charged during FY 01 with selling alcohol to a minor faced swift punishment. Reasonable persons can disagree as to whether the penalties eventually imposed were certain and severe.

In FY 01, compared to previous years, there was a significant increase in the number of licensees charged with selling alcohol to a minor. A review of BLC office records showed that when the number of reported violations increased the follow up

administrative licensing action often got delayed. Whether the administrative penalty eventually imposed was certain and/or severe is something reasonable persons can disagree upon.

During FY 01, there were 90 sale-to-minor violations reported to the Office of the BLC. This represented a three-fold increase from the 30 sale-to-minor violations reported in FY 00. The notable "spike" appears to have resulted from a combination of an increased number of compliance checks conducted by the MCPD and a higher rate of sales to underage buyers.

The BLC and the Office of the BLC were not positioned to absorb the increased caseload. As a result, during the past 18 months, there often were significant time lapses between the date that a sale-to-minor incident allegedly occurred and the timing of follow-up administrative licensing action. Specifically:

- It took an average of seven weeks from the date of an alleged sale-to minor incident for the Office of the BLC to send out a letter about the incident to the licensee;
- It took an average of 23 weeks from the date of an alleged sale-to-minor incident for a show cause hearing to be held when the hearing was requested by the BLC.
- It took an average of 33 weeks from the date of an alleged sale-to-minor incident for a show cause hearing to be held when the licensee requested a hearing.

In addition, the time frames established for licensees to reply to the Office of the BLC were not strictly enforced. Although letters of Offer and Compromise indicate that licensees must reply to the Office of the BLC within 20 days, Board staff were lenient with licensees about this deadline and often allow them significantly longer than 20 days to actually respond.

The BLC does not have a written penalty matrix for selling alcohol to an underage person. However, the BLC's general practice in recent years has been to fine 1st offenders \$1,000. Until FY 01, the BLC's general practice had been to require all second offenders to appear for a show cause hearing. However, as part of the Board's strategy for dealing with an increased caseload in FY 01, the BLC started to routinely offer second offenders a fine of \$2,000. Third or subsequent offenders are mandated to appear for a show cause hearing, and the penalty imposed on these multiple offenders had usually included a license suspension.

In terms of eventual outcomes for the licensees charged with selling to a minor in FY 01:

- 82% paid a fine and 8% had their license suspended;²
- Of the 76 licensees who paid fines: 55 (71%) paid \$1,000; and 12 (15%) paid \$2,000; one licensee paid a fine of \$5,000 and one licensee paid a fine of \$10,000.

As of December 15, 2001, about 10% of the licensees charged with a sale-to-minor violation that occurred during FY 01 had not paid a penalty. In particular, 6% had their cases dismissed and 4% of the cases were still pending.

Reasonable persons can disagree as to whether the County's record of administrative penalties meets the test of certain and severe punishment. Compared to jurisdictions that do not routinely enforce alcohol age-of-sales laws at all, the County's record of imposing any administrative penalties appears harsh. However, compared to some other jurisdictions and states that routinely impose tougher penalties, especially with respect to more frequent suspensions, the County's fines are average in their severity.

Finding #6: Although the BLC's Rules and Regulations includes procedures for the conduct of show cause hearings, the Board does not strictly adhere to these procedures in practice. Although the BLC's rules state that an Assistant County Attorney may represent the County's position before the Board, to date, this has not occurred.

By law, hearings held by the County's BLC are not required to adhere to the strict rules of evidence. This is consistent with the rules for other quasi-judicial boards that are charged with imposing administrative (not criminal) penalties. In order to find a licensee guilty of violating the alcohol licensing laws, the BLC need only find that there is a "preponderance of evidence" that the violation occurred. This stands in contrast to a criminal proceeding where the court must find that a person violated the law "beyond a reasonable doubt."

State law requires that the Board develop hearing procedures that are approved by the County Council. The Council (by resolution) most recently adopted chapter 4 of the Board's Rules and Regulations in 1995. Rule 9, Conduct of show cause hearing, outlines the order of business at a show cause hearing but describes the protocol as "ordinary but not mandatory." OLO's observations of Board hearings between June and November 2001 found that the order of business outlined in Rule 9 is not strictly followed.³

² No licensee had his/her license to sell alcohol revoked.

³ See Appendix C-4 (©16), Rules and Regulations, Rule 9, Conduct of show cause hearing; that sets forth the order of business at a show cause hearing.

The Board's rules also state that, "In the appropriate case, an Assistant County Attorney may represent the County's position before the Board." It is OLO's understanding that this provision has never been put into practice due to resource constraints in the County Attorney's Office.⁴

OLO's direct observation of Board hearings are that without someone assigned to representing the County's position before the Board, the County's case is not always presented in an organized and comprehensive way. In OLO's view, the lack of a "prosecutor" makes the hearing uneven, with the County's argument that a sale-to-minor violation occurred being under-represented. This is especially true when the licensee has his/her attorney with a well-organized defense lined up.

Finding #7: Some (but not all) sale-to-minor violations result in a criminal charge being filed against the individual clerk/server who made the sale. In almost all cases, sale-to-minor criminal charges have been nolle prossed in return for the defendant's agreement to complete between 24-50 hours of community service.

Data on the disposition of District Court cases involving the sale-of-alcohol to an underage person are not readily available. At OLO's request, Department of Information Technology staff conducted a special inquiry of the County's criminal justice data system (CJIS), and provided the following summary data.

Between July 1998 and September 2001, 121 persons were charged criminally with selling alcohol to a minor. Of the 116 cases resolved as of November 2001, CJIS records show that:

- 103 cases were nolle prossed;
- Eight defendants were found guilty (7 of these 8 defendants received a Probation before Judgement disposition);
- Four cases were dismissed; and
- One defendant was found not guilty.

85 of the 103 individuals whose cases were nolle prossed completed community service, almost all (91%) through the Department of Correction and Rehabilitation's Alternative Community Service Program. The other 9% completed private community service. Of these persons, the largest cohort (42%) completed 50 hours of community service, another 37% completed between 24 and 40 hours.

⁴ The rules also state that at no time will the Board's legal advisor represent the County before the Board." In other words, it would need to be a different Assistant County Attorney than the one assigned as the BLC's legal advisor.

Finding #8: Under the existing structural arrangement and current practices, County-owned liquor dispensaries do not face the same administrative consequences as private retail establishments for selling alcohol to an underage person.

The County's Board of License Commissioners does not license County-owned liquor dispensaries (stores). When a sale to minor occurs in a County-owned liquor store, under current practice, the administrative consequences are different than they are for private retail establishments.

As noted earlier in this report, State law (Article 2B, Section 15-203(d)(6)) provides that for purposes of enforcing the alcohol age-of-sales laws, a manager of a County liquor store or an individual with whom the County's Department of Liquor Control (DLC) contracts with to operate a retail outlet are deemed licensees. The law further provides that an individual working in a County-owned store sells alcohol to a minor, "Is subject to fine and suspension or revocation of employment by the Board of License Commissioners in the same manner as a licensee or employee of a licensee. . . "

OLO understands that, to date, the Board of License Commissioners has deferred to the DLC to continue internal administrative sanctions against the individual clerk who made the sale of alcohol to minor. When a compliance check in a County liquor store results in a sale of alcohol to the underage buyer, the police event report is sent to the Office of the Board of License Commissioners. The Executive Director of the Office of the BLC reviews the report, attaches a cover memo, and forwards it to the Director of the Department of Liquor Control.⁵

According to DLC staff, there have been six incidents in the past two years in which a clerk at a County-owned liquor store sold alcohol to an underage buyer as part of a compliance check operation. DLC reports that in each of these cases, the individual clerk was fined \$500. DLC also reports that, as of this writing, five of these six clerks charged no longer work for DLC. DLC recently changed its procedures so that a clerk found selling alcohol to an underage person will, in the future, face a fine equal to one week's salary.

⁵ When the police also pursue criminal charges against the individual clerk who made the sale, the procedure is the same for County-owned stores as it is for private retail outlets.

Finding #9: The licensees interviewed view compliance checks as an acceptable form of enforcement as long as they are done “fairly.” Licensees offer a mix of compliments and criticisms of the County’s current compliance check program.

Most licensees described a "fair" compliance check as one where the underage buyer clearly looks under 21 years of age, does not present false identification, answers all questions truthfully, and does not try to play tricks (i.e., distract the clerk) to encourage the sale to occur.

Other views shared by most of the licensees who had direct personal experience with one or more compliance checks in their establishments included that:

- Establishments that are found repeatedly selling alcohol to underage persons should be fined heavily.
- Licensees should be informed when their establishment either passes or fails a compliance check. Only informing licensees when their establishments fail does not give the licensees feedback about what they are doing right.
- If a licensee has a good record of not selling alcohol to underage buyers, this record should be taken into account by the Board of License Commissioners when/if the licensee's establishment is ever charged with selling alcohol to a minor.
- Licensees would like more information about how the County conducts compliance checks, e.g., the County's protocol, how establishments are selected, the County's process for pursuing administrative/criminal penalties.
- Too much time elapses between the time an incident occurs and the time that the Board of License Commissioners follows up with administrative licensing action, especially with respect to the scheduling of show cause hearings.

CHAPTER H: RECOMMENDATIONS

While reducing alcohol sales to minors will not eliminate underage drinking, OLO recommends that the County maintain a vigorous program of compliance checks as part of an overall strategy to discourage alcohol consumption by persons under 21.

The empirical research shows that a well-designed compliance check program can increase retailers' enforcement of the alcohol age-of-sales laws and identify retailers who violate the law. Compliance checks are easier, quicker, and less expensive than other strategies to enforce alcohol sale laws.

Compared to other strategies available to enforce the alcohol age-of-sale laws, compliance checks are relatively easy, quick, and inexpensive. The empirical research indicates that a well-designed compliance check program can be an effective way to increase retailers' voluntary enforcement of the alcohol age-of-sales laws, as well as a tool to identify retailers who violate the law.

A well-publicized compliance check program offers another opportunity for the County Government to reinforce a community norm that underage drinking and the sale of alcohol to underage persons is not acceptable. The County's responsibility to strictly enforce the alcohol age-of-sales laws seems particularly important because of the unique role the County has both in selling alcohol and licensing establishments to sell alcohol.

The following recommendations constitute a package of changes aimed at improving the long-term effectiveness and efficiency of the County's compliance check program as a strategy for reducing the sale of alcohol to minors. In particular, OLO recommends some changes be made to how the County plans and conducts compliance checks, and to how the County follows-up with imposing administrative and criminal penalties against violators.

Recommendation #1: Develop an inter-office Memorandum of Understanding for a coordinated approach to conducting compliance checks.

OLO recommends that the Chief Administrative Officer (or designee) facilitate a series of meetings to develop a Memorandum of Understanding (MOU) that articulates a coordinated inter-office approach to conducting compliance checks.⁶ The MOU should be developed and signed by representatives from the:

- Department of Police;
- Office of the County Attorney;
- Board of License Commissioners;
- Office of the Board of License Commissioners; and
- Office of the State's Attorney.

⁶ OLO sees this process as a continuation of the dialogue that was started in December 2001, as the result of a meeting that OLO convened among representatives from many of the involved offices.

A representative from the Department of Liquor Control and at least one representative from the County's Alcoholic Beverages Advisory Board should also be invited to participate.

The purpose of the meetings would be to agree on the parameters of conducting compliance checks in the County. Specific parameters to discuss and reach accord on include:

- How to select establishments for compliance checks;
- How often and when to conduct compliance checks;
- The protocol for conducting compliance checks, including who should conduct them, how to select underage buyers, and when to inform licensees whether their establishments passed or failed;
- Time frames and process for pursuing administrative and criminal penalties for selling alcohol to an underage person; and
- How to track and report the results of compliance checks and information about penalties imposed on violators.

An important result of these inter-office discussions is for the County to clarify the respective roles of the Police Department and Office of the BLC in carrying out compliance checks. Options for dividing responsibility include:

- Assign 100% of the responsibility for conducting compliance checks to the Police Department or to the Office of the BLC;
- Continue to share responsibility for conducting compliance checks, but with a clear division of labor, e.g., the Police Department assumes responsibility for conducting checks in off-sale establishments while the Office of the BLC assumes responsibility for conducting checks in on-sale establishments; or
- Conduct joint compliance checks, e.g., a Tobacco Alcohol Enforcement Specialist and a police officer are assigned to work together with an underage buyer to conduct compliance checks.

The two tables on pages 77-78 outline OLO's recommended targets for the County's compliance check program. Agreement with OLO's recommendations on these details, however, is far less important than for the line agencies to reach agreement amongst themselves. The line agencies should also adopt a process for ongoing communication about matters that may directly or indirectly affect each other's workloads and collective program results.

Recommendation #2: Implement changes to increase the certainty (both perceived and actual) that licensees who sell alcohol to underage persons will consistently face swift and severe administrative penalties.

Consistent with the empirical research on deterrence, OLO recommends that the County's goal should be to consistently deliver swift and severe penalties to licensees whose establishments sell alcohol to an underage person. This result should not change even during periods of time when a larger than expected number of licensees are charged with selling alcohol to an underage person.

As reported in OLO's findings, in FY 01, compared to previous time period, there was a significant increase in the number of licensed establishments in the County charged with selling alcohol to an underage person. To avoid repeating the experiences of the past 18 months (e.g., significant time lapses between incidents and imposition of administrative penalties; lesser penalties imposed on second time offenders, cases dismissed because witnesses did not show at hearings), OLO recommends the County implement the following changes:

1. Adjust frequency and/or length of Board meetings to ensure that Board action on underage alcohol violations is taken within 100 days of a reported incident. The BLC's current practice of meeting twice a month limits the number of show cause hearings to between four and six each month. As a result, even a small increase in the number of licensees charged with selling alcohol to a minor can quickly increase the time between an incident and the date of a show cause hearing.

Recognizing that the Board's workload is likely to fluctuate from year to year, OLO recommends that the County revise what is expected from individuals appointed to the BLC. Specifically, BLC members should be told (preferably before they apply to serve) that the County expects them to make time for additional hearings, if and when the scheduling of additional hearing is needed to maintain expedient action on alcohol violations. OLO recommends that the Board adopt a target time line of taking action within 100 days of any reported sale-to-minor incident.

Note on BLC Member Compensation. State law establishes a salary for BLC members, but does not stipulate the number of hours associated with serving on the Board. This means that BLC members currently receive \$9,000 (the Chair receives \$10,000) regardless of the number of hearings held. Under the current schedule of two meetings a month (24/year), this salary translates into approximately \$375 per meeting. A typical hearing day begins at 9:00 AM and ends at 4:00 PM; members usually take one hour off for lunch. Given the current compensation amounts, OLO does not believe an increase is required to accompany the change in expectations that is recommended.

2. Assign an Assistant County Attorney to present the County's case in show cause hearings on sale-to-minor violations. The BLC's Rules and Regulations provide that, "In the appropriate case, an Assistant County Attorney may represent the County's position before the Board." Under current practices, an Assistant County Attorney is assigned to advise the Board, but none has been assigned to present the County's charges of alcohol violations to the BLC.

The BLC Chair maintains order during BLC hearings and calls upon the different parties to testify. However, no one is responsible for making sure the County's witnesses will appear and present the necessary evidence, or for logically presenting and defending the various components of the County's case in front of the BLC. Although Commissioners have the opportunity to ask questions, there is no "prosecutor" to carefully cross-examine the licensee or the licensee's witnesses, or to provide direct rebuttal to the defense's arguments. As a result, especially when licensees appear before the Board with an experienced defense attorney (which often happens), the County's case is unevenly represented.

Given the current workload of the Office of the County Attorney, there would likely be a modest fiscal impact of implementing this recommendation. However, OLO recommends it would be a good investment, given how wasteful it is to allocate MCPD, Office of BLC, and Commissioner time only to lose a sale-to-minor case because it is not well presented to the BLC.

3. Adopt a penalty matrix for administrative licensing sanctions associated with different violations. OLO recommends the County's BLC incorporate a penalty matrix into the Board's formal written rules and regulations. OLO strongly recommends that the BLC include a mandatory license suspension as part of the penalty imposed on licensees who commit a second sale-to-minor offense within three years. This would parallel the practice in a number of other jurisdictions known for strict enforcement of alcohol age-of-sales laws, e.g., Virginia, Oregon, Nebraska. The BLC can look to examples of penalty matrices in these places for language that retains Board discretion to vary from the matrix under certain circumstances.

4. Introduce a fast-track process for dealing with repeat offenders. OLO recommends that the BLC introduce a fast-track process for taking administrative licensing action against establishments who are charged with more than two violations of selling alcohol to a minor within three years. Holding expedited hearings for repeat offenders would underscore the County's commitment of taking swift and decisive action against the small number of licensees that repeatedly violate the alcohol age-of-sale laws. The BLC would need to work with the Office of the County Attorney in order to develop a schedule for fast-track hearings that are consistent with notice requirements in State law.

5. Adhere to the Board's current rule concerning alcohol awareness training for a sale-to-minor violation and add the purchase of license scanners as part of the standard penalty. OLO recommends that the BLC begin imposing the penalty that already exists in the BLC's Rules and Regulations that "Any licensee or employee of any licensee found guilty of serving alcohol to a minor must attend alcohol awareness training within 60 days of the show cause hearing."⁷ (Rule 3.13) OLO also recommends that the BLC add a requirement that licensees found guilty of selling alcohol to a minor must purchase a license scanner.

License scanner technology allows a clerk to scan the barcode or swipe a driver's license through a device, which then identifies if the license is real (vs. fraudulent) and displays the age of the potential buyer on a small screen. The State of Maryland drivers' licenses are currently 100% readable by numerous scanner products that cost between \$500 and \$2,000. In New York and Ohio, using an "age verification device" provides licensees with "affirmative defense" when faced with charges of selling alcohol or tobacco to underage persons. In Oregon, first and second offenders are given the option of purchasing a license scanner in place of paying a monetary fine.

Recommendation #3: Increase community awareness of the County's compliance check program, publicize compliance check results, and publicize the penalties imposed upon establishments that sell alcohol to underage persons.

While the law enforcement effort is a core piece of a compliance check program, there will never be enough resources to enable the County Government to constantly be "looking over the shoulder" of all 800+ licensed establishments in the County. One strategy for leveraging the resources that are available is to promote voluntary compliance by maximizing the deterrent effect of the compliance checks that are conducted.

The research on deterrence consistently finds that in order to be effective, there must be a credible threat that a significant negative consequence will occur, the threat must be perceived to be swift and certain, and in order for the deterrent to remain over time, the threat must be perceived to continue. Publicizing how the County's program operates (both on paper and in practice) is essential to the success of the deterrence aspect of the program.

⁷ See Chapter C, The Legal Framework, for additional information about this requirement.

After agreement is reached on the parameters of the County's compliance check program (see Recommendation #1), OLO recommends two separate but related publicity efforts:

- The Office of the Board of Licensees should make a concerted effort to inform all licensees about the County's coordinated approach to conducting compliance checks. OLO recommends that all licensees regularly receive written information about how compliance checks are conducted and up-to-date reports on the penalties imposed upon violators.⁸
- The County Government (The Public Information Office working in conjunction with the Office of Media Services of the Police Department) should plan a media campaign to the general public about the County's compliance check program. The media campaign could, for example, include a press conference with elected officials, regular press releases about compliance check results, and a standing invitation to reporters to "ride-along" on compliance checks. Appendix E-5 (©63) contains samples of press releases about compliance checks results issued by the Oregon Liquor Control Commission.

To increase general community awareness about the enforcement of alcohol age-of-sale laws, the County should make data on the penalties imposed for selling alcohol to a minor accessible to the public. In Oregon, for example, the liquor board maintains a web site that lists the names of establishments cited for various alcohol-related violations, including underage alcohol sales. The site also posts the penalty imposed (fine paid, number of days license suspended, etc.) upon the establishment for committing each violation.

Recommendation #4: Actively lobby for amending State law to allow a law enforcement officer to issue a criminal citation to a clerk/server for selling alcohol to an underage person.

OLO concurs with the generally held view that pursuing administrative penalties against the licensee (who sets policies within his/her establishment and trains the clerks/servers) is a more effective sanction for selling alcohol to an underage person than pursuing criminal penalties against the individual clerk/server who sold alcohol to a minor. However, OLO also sees value in pursuing criminal charges, especially if State law can be amended to make it less time consuming for officers to do so.

⁸ Appendix D-6 (©46) contains the most recent Department of Liquor Control newsletter (June 1999) that published the penalties imposed by the BLC upon licensees for alcohol violations.

Under current law, pursuing criminal charges against the individual clerk/server who sold alcohol to an underage person is time consuming and cumbersome. This is because current law does not allow an officer to simply issue a criminal citation for a violation of the alcohol age-of sales laws. Instead, the officer who observed the sale must now appear before a District Court Commissioner to file criminal charges.

There are two options for fixing this situation, both of which involving amendments to State law:

- Maintain the penalty (maximum fine of \$1,000 and/or one year in jail), but add selling alcohol to a minor to the list of violations for which a criminal citation can be issued; or
- Reduce the penalty (to a maximum fine of \$500 and/or 90 days in jail) so that a criminal citation can be issued for selling alcohol to a minor.

To solve the current problem. OLO supports either approach. However, OLO prefers the first option because it does not reduce the penalty that a judge could impose for selling alcohol to a person under 21.

Recommendation #5 : Develop a more equitable approach for dealing with County-owned liquor stores that sell alcohol to an underage person.

Under current practice, County liquor stores do not face the same consequence as private retail establishments for selling alcohol to an underage person. In order to send a consistent message to the community about the importance of not selling alcohol to underage persons, OLO recommends that the County Government begin to impose comparable administrative penalties upon its own stores when a violation of the alcohol age-of-sales law is identified through a compliance check.

When a compliance check in a County liquor store results in a sale of alcohol to the underage buyer, the pursuit of criminal charges against the clerk proceeds just as it would in a private retail establishment. However, in terms of follow-up administrative action, the police event report is sent to the Office of the BLC, which then forwards the report to the Department of Liquor Control. To date, the BLC has not acted on the provision of State law (Article 2B, Section 15-203) that authorizes the BLC to take administrative action (in the form of a fine and suspension or revocation of employment) in situations where a County-owned liquor store sells alcohol to a minor.

According to DLC staff, there have been six incidents in the past two years in which a clerk at a County-owned liquor store sold alcohol to an underage buyer as part of a compliance check operation. In addition to whatever penalty was imposed upon the clerk by District Court (as the result of the criminal charges), each of these six clerks was fined \$500.⁹ DLC recently changed its procedures so that a clerk found selling alcohol to an underage person will, in the future, face a fine equal to one week's salary.

The Department of Liquor Control should be recognized for taking punitive action against the clerks in County-owned stores who actually made the sale of alcohol to an underage person. However, just as a licensee of a private retail establishment is held accountable for the sale of alcohol to a minor in his/her place of business, someone in the management chain above the clerk should be subject to an administrative sanction when a sale-to-minor occurs in a County-owned store. OLO recommends that the Council ask the CAO to recommend what he believes such an appropriate sanction might be.

⁹ DLC also reports that, as of this writing, five of these six clerks charged no longer work for DLC.